fraud renders the testimony too dangerous to leave to the jury. In any event, the jury, of course, may gauge the weight of the evidence according to the circumstances under which the declarations were made. See *Matteson* v. *New York Central R. Co.*, *supra*, p. 491; *Kent* v. *Lincoln*, *supra*, p. 598.

EVIDENCE — HEARSAY: IN GENERAL — USE OF ACCOUNT-BOOKS TO PROVE NON-DELIVERY OF GOODS. — In an action for goods sold, the defendant was allowed to introduce both his books of account and the testimony of his bookkeeper to show that there was no record of receiving the goods. *Held*, that this was error. *Winder* v. *Pollack*, 151 N. Y. Supp. 870 (Sup. Ct., App. Term).

The account-books could not be admitted under the ancient shop-book exception, for the defendant had a clerk. *Ruggles* v. *Gatton*, 50 Ill. 412. See *Smith* v. *Smith*, 163 N. Y. 168, 57 N. E. 300. But this limitation has undoubtedly been frequently relaxed by rather loose statutes. See 2 WIGMORE, EVIDENCE, § 1538. Under the shop-book exception, moreover, the evidence was inadmissible on the ground taken by the court, that it was merely negative. *Scott* v. *Bailey*, 73 Vt. 49, 50 Atl. 557; *Alexander* v. *Smoot*, 13 Ired. (N. C.) 461. But see 2 WIGMORE, EVIDENCE, § 1556. Under the broader exception admitting entries made in the course of duty, this objection should have no force. *Peck* v. *Pierce*, 63 Conn. 310, 28 Atl. 524; *Bastrop State Bank* v. *Levy*, 106 La. 586, 31 So. 164; *Huebener* v. *Childs*, 180 Mass. 483, 62 N. E. 729. *Contra*, *Lawhorn* v. *Carter*, 11 Bush. (Ky.) 7. Of course any record to be thus used as evidence that something did *not* occur must be both regular and exhaustive. *Shaffer* v. *McCrackin*, 90 Ia. 578, 58 N. W. 910; *Riley* v. *Boehm*, 167 Mass. 183, 45 N. E. 84. But these books were clearly inadmissible as entries in the course of duty, since the entrant was available in court. *Bartholomew* v. *Farwell*, 41 Conn. 107; *State Bank of Pike* v. *Brown*, 165 N. Y. 216, 59 N. E. 1. There is, however, still a third possible way of introducing this kind of evidence. Under modern statutes allowing parties to testify in their own behalf, account-books can be used to supplement or refresh a witness' memory, and the shop-book exception becomes unnecessary. *Nichols* v. *Haynes*, 78 Pa. 174; *Anchor Milling Co.* v. *Walsh*, 108 Mo. 277, 18 S. W. 904. *Bushnell* v. *Simpson*, 119 Cal. 658, 51 Pac. 1080. See 2 WIGMORE, EVIDENCE, § 1560. Accordingly, if the books in the principal case were tendered under this last theory, to supplement the clerk's recollection, they should have been admitted, though their proof was merely negative. *State* v. *McCormick*, 57 Kan. 440, 46 Pac. 777; *Guy* v. *Mead*, 22 N. Y. 462. But see *Sanborn* v. *Fireman's Ins. Co.*, 16 Gray (Mass.) 448.

FOREIGN CORPORATIONS — CONDITIONS UPON THE RIGHT TO DO BUSINESS — VALIDITY OF JUDGMENT ON FOREIGN CAUSE OF ACTION BASED ON SERVICE ON STATE OFFICER. — A Louisiana statute provided that suit might be commenced against a foreign corporation which did business in the state by service of process on the secretary of state if the corporation had failed to designate agents on whom process could be served. After such service and with no actual notice, judgment by default was entered against such a corporation in the state court on a cause of action arising outside the state. The corporation now seeks, in the federal court, to enjoin the enforcement of this judgment on the ground of lack of jurisdiction in the state court. *Held*, that the judgment will be enjoined. *Simon* v. *Southern Ry. Co.*, 236 U. S. 115.

See this issue, p. 804, for a discussion of the principles involved in this case.

FRANCHISES — RIGHT TO ENJOIN COMPETITOR ILLEGALLY DOING BUSINESS WITHOUT LICENSE. — The plaintiff telephone company sought to enjoin a competitor from engaging in the telephone business without a license from the Public Utilities Commission, which was required by law. KANSAS LAWS, 1911,